



Spectrum Resources

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 th Street S.W.
Washington, DC 20554

August 5, 2013

Re: Exparte Notification and Informal Comments;
Procedures for Assessment and Collection of Regulatory Fees (MD Docket No. 12 -201);
Assessment and Collection of Regulatory Fees for Fiscal Year 2013 (MD Docket No. 13 - 140); and Assessment and
Collection of Regulatory Fees for Fiscal Year 2008 (MD Docket No. 08 -65)

Dear Ms. Dortch;

Fireweed Communications would like to see the below language in an Memorandum, Opinion and Order:

In that Commission methodology in assessing fees does not adjust fees or procedures to include protection of, or consideration of small business, in that Commission methodology does not adjust fees¹ to account for reduced benefit² to broadcasters after consideration of costs of public interest obligations, in that Commission methodology in assessing fees disregards the clearly reduced benefit afforded low band VHF broadcasters³, we suggest the below language be included in the fee schedule for 2013 and subsequent years until such time as a more accurate methodology can be adopted⁴.

Broadcast Media Services Small Business Fee Reduction: Qualifying small businesses regulatees may request regulatory and application fee reductions to 3% of the fee otherwise applicable. Qualifying small businesses will have a station or application for a station authorized under part 73 of the rules. Reductions will apply to the stations translators, if any, authorized under part 74. A qualifying small business is 1:) A business with gross income for all owned or controlled businesses combined of no more than 3% of that defined for Radio or Television in SBA regulations 13 CFR 121.10 et. Seq.⁵ Gross income may be calculated on a cash or accrual basis but shall not include income used to pay what are commonly referred to as advertising agency discounts. Barter revenue shall be included as income. When an individual reports income, as in the case of an individual licensee, the report must include all income except that earned or unearned as defined by 42 USC § 1382a. 2:) An entity having cognizable ownership in no more than one broadcast facility authorized under part 73. (full service. See § 73.3555 Multiple ownership. For purposes of this section, cognizable interests are not applicable to noncommercial educational FM and noncommercial educational TV stations.)

The Commission could issue an order to staff, perhaps as a footnote, that states; **“A media regulatee, currently in red light status, and formed as an LLC, and which pursuant to a fee waiver request has been notified that the Commission demands personal financial disclosure of its LLC members, and which waiver request has been denied, may request nonc-pro-tunc reconsideration of the denial at any time.**

¹ Title 5 of the United States Code, sections 601 – 612 requires the agency to account for the impact of its rules on small businesses.

² 47 U.S.C. § 159(b)(1)(A).

³ The captioned Further Notices of Proposed Rulemaking gives no consideration of the lesser value of low band VHF, and proposed instead higher fees for that band than any other TV band in 2013 then proposes the same fee will apply to all bands thereafter.

⁴ Fees were reduced for small entities applying to the US Patent Office. See, Department of Commerce, Patent and Trademark Office, [Docket No.: PTO-P-2006-0034], Notice, November 20, 2006. <http://www.uspto.gov/web/offices/com/sol/og/2006/week50/patflex.htm>

⁵ A table of size standards is found at http://www.sba.gov/sites/default/files/files/size_table_07222013.xlsx For example, Television broadcast is set at \$35.5 million. For example, A station having gross income of \$ 1.065 million or less which is facing a fee of \$10,000 would be required to pay \$300 so long as a gross income statement is provided along with the fee. An application fee of \$100 would be liable for nothing, as a reduction to 3% would be \$3. The minimum charge is \$10.00 so no application fee would be applicable. Where the entity is an LLC or individual, the LLC and individuals must file statements for the most recent year available. A confidential internet drop box will be made available for that purpose.

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We have set forth our views on the current very flawed fee system. In the case of Fireweed, the inequitable structure that has been in place has put Fireweed TV into gridlock, thus we urge relief for Fireweed and any other media regulatees similarly situated.

Call to Mika Savir:

On August 1st, I, Jeremy Lansman, called Ms. Mika Savir, of Enforcement. She asked which filing in this proceeding I wanted to discuss. Not remembering at that moment the exact sequence, I may have said the first, but in fact, the first filing (June 19 2013) was an upload of a draft. I should have said the June 21 filing was the corrected one. I mentioned that due to Fireweed's redlight status, applications it makes will not be processed. I mentioned the STA request made as a result of transmitter destruction in a superstorm (see BDSTA 20121001AKV) which if granted would have authorized the station to continue at reduced power, which it did as authorized by statute⁶ if not by the FCC. I also noted that resolution of the conflict could be had by adopting MMTC's proposal to set a class. She asked why timely personal financial disclosure was not possible, to which I replied that usually we sought IRS extensions.

I mentioned that it is not possible for Fireweed to pay the regulatory fees, the station is in red light status, and thus both the FCC and Fireweed do not comply with FCC rules. For example, go to the KYES-TV public file at <https://stations.fcc.gov/>, and notice the coverage map and authorization are missing. The coverage map is required under § 73.3526. Fireweed cannot post the map, as it is produced by the FCC itself⁷, thus, in this case the Commission itself is forcing a violation of its own rule. Some would say that all Fireweed has to do is pay the current and past fees. It is not possible to pay the FCC fees AND the electric bill. In our exparte conversation I stated that the fees were unfair, that Fireweed has insufficient funds on hand to pay the current fees, or the arrears fees, setting the station on a collision course with the Commission. I said if the choice is about continuing to perform a public service, and continue broadcasting, or be put off the air by the FCC for lack of money to pay the fees, we will choose the latter.

On Friday, August 2, 2013 I, Mika Savir and Roland Helvajiam of OMD had a telephonic meeting. In addition to above subjects I gave a brief review of my history in broadcasting and the history of Fireweed Communications. The history of Fireweed included converting to digital without the funds to properly do so, and the bankruptcy of Fireweed Communications Corp. I mentioned that previous fee billings were in part a comedy as the corp. was not the licensee yet it was billed, and that in an effort to be transparent in matters regarding fees, I had requested waivers for the LLC with combined LLC and Corp. financial showings. We discussed MMTC's comments, which I said seem to have a lot of merit, though I do not have resources to understand all of the implications in the MMTC's citations. I mentioned that when making a waiver request, asking for LLC members personal financial information can result in unresolvable timing issues, in that personal IRS filings might be extended. I mentioned recent history; the challenge of analogue shut down where funds were not available, that the conversion was done anyway unlike most other stations lacking funds, KYES-TV stayed on the air. And that it seems viewers are very appreciative. One result, according to the the FCC, if you look at the KYES-TV on line public file, the station has no authorization.

Roland suggested that selling the station, especially during bankruptcy, would have been easy, in spite of redlight status. I responded that selling it is less probable as low band VHF is seen as undesirable, especially in view of the reverse auction. Yet the irony is that VHF has been and will be charged more than UHF.

During discussion of VHF versus UHF I mentioned that the CBS station, as a result of the unfair fee structure, paid a lower fee than (and FOX).

I mentioned that having to file and ask for a waiver request was counter to the purpose of the Regulatory Flexibility Act. Roland responded that is not so. Stations need not seek a waiver, they can just pay the fee. I told him paying the fee is not an option for Fireweed.

Call to Joel Kaufman:

I spoke very briefly with Mr. Kaufman, noting that there were two potential triggers that would lead to conflict regarding KYES-TV; one being moving the past due fees to a commercial collection company, the other being any potential action by the enforcement bureau to investigate supposed rule infractions resulting from the companies red

⁶ 47 USC 307 (f)

⁷ We assume the map cannot be produced as the station operates under program test authorization pending resolution of its request for a license, which request is on red light hold.

light status.

Mr. Kaufman suggested I call Debra Weiner, which I did several times, once leaving voice mail with a suggestion an appointment be set via email for a telephone conference. I have not received an e-mail response at this time.

Yours truly,

Jeremy Lansman
Member
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